

**Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, a General Partnership d/b/a Wheelco Co. and International Molders' and Allied Workers' Union, AFL-CIO-CLC.** Case 25-CA-9603

March 12, 1982

# DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On June 29, 1981, Administrative Law Judge Russell M. King, Jr., issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge to the extent consistent herewith.

The Administrative Law Judge found, *inter alia*, that prior to the election Respondent violated Section 8(a)(1) of the Act by suggesting and otherwise encouraging its employees to abandon the Union and form their own committee for the purpose of bargaining with Respondent. We agree with this finding. However, the Administrative Law Judge further found that Respondent had nothing to do with the actual formation and administration of the committee after the election and, therefore, did not engage in further unlawful conduct in violation of Section 8(a)(2) and (1). For the reasons set forth below, we disagree with this finding.

According to the credited testimony of employee Gayle Cunningham, at a meeting approximately 1 week before the election held on January 13, 1978,<sup>2</sup> one of Respondent's general partners, Randy Wheeler, told the assembled employees that instead of filing a petition with the Board they could have "brought a petition to him and then we could have drawn up a contract between us and him without involving a union." Cunningham further testified that, approximately 1 week after the election, Wheeler approached him and several other em-

ployees and asked "if we had come up with . . . some kind of a contract or committee to draw up a contract for the company." The employees responded that they had not decided yet but that they would get together and vote on it. Wheeler stated that the employees should "go ahead and do it." Thereafter, some employees met and selected a committee of four. Cunningham then informed Wheeler, who told Cunningham "to go ahead and draw up a contract, it was fine with him the committee we had." This committee subsequently met with Respondent and negotiated concerning certain terms of employment, including holidays, sick and funeral leave, an absentee policy, and insurance benefits, and agreement was subsequently reached as to several of these items.

From the foregoing it is clear that Respondent was the "moving force" behind the formation of the employees' committee.<sup>3</sup> After the election, Wheeler, pursuant to an earlier suggestion which had *not* been acted on by the employees, encouraged if not instructed the employees to follow through on his earlier suggestion. Thereafter, he indicated approval of their selection of a committee, instructed them to "draw up" a contract proposal, and bargained with the committee concerning terms and conditions of employment.<sup>4</sup> Although there is little evidence that Respondent exercised any control over the selection and activities of the committee once formed so as to constitute unlawful domination, its conduct in suggesting and encouraging on several occasions that such a committee be formed and that Respondent would be willing to bargain with it, Respondent's tacit approval of the committee's selection, and its subsequent instruction to "draw up" a contract and present it constituted unlawful interference in the formation and administration of a labor organization.<sup>5</sup> Accordingly, we find that by so doing Respondent violated Section 8(a)(2) and (1) of the Act.<sup>6</sup>

<sup>1</sup> *Spiegel Trucking Company*, 225 NLRB 178, 179 (1976).

<sup>2</sup> We note that the evidence fully supports a finding that this committee is a "labor organization" within the meaning of Sec. 2(5) of the Act. See, e.g., *Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home*, 249 NLRB 1153 (1980).

<sup>3</sup> See, e.g., *Victor M. Sprys d/b/a Eastern Industries*, 217 NLRB 712 (1975); *Arrow Specialties, Inc.*, 177 NLRB 306 (1969). See also *Edward A. Utlaut Foundation, Inc. d/b/a Edward A. Utlaut Memorial Hospital and Fair Oaks Nursing Home*, *supra*; *Spiegel Trucking Company*, *supra*.

<sup>4</sup> As noted by the Administrative Law Judge, the complaint does not specifically allege that this conduct violated Sec. 8(a)(2), alleging only a violation of Sec. 8(a)(1). However, the Board has held that, so long as the complaint clearly describes the conduct alleged to constitute an unfair labor practice, the General Counsel's failure to allege which subsection of the Act has been violated or the General Counsel's allegation of violation of the wrong subsection does not preclude the Board from considering and deciding the issue, provided, of course, that the charged party was not misled and the issue was fully litigated. *Unit Train Coal Sales*, *Continued*

<sup>1</sup> The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> All dates hereinafter refer to 1978.

## AMENDED REMEDY

Having found that Respondent, in addition to the violations found by the Administrative Law Judge, has violated Section 8(a)(2) and (1) of the Act by interfering with the formation of a labor organization, we shall order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. In this regard, we shall order that Respondent withdraw and withhold all recognition from the employees' committee unless and until said committee has been duly certified by the Board.<sup>7</sup>

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Randall E. Wheeler, Kevin E. Wheeler, and Edmund J. Wheeler, a General Partnership d/b/a Wheelco Co., Kingsbury, Indiana, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees regarding their union sentiments and support.

(b) Threatening reprisals if employees engage in protected concerted activities.

(c) Giving employees the impression that their union activities are under surveillance.

(d) Improperly interrogating employees concerning the allegations and issues raised in any complaint issued against it by the Board's General Counsel.

(e) Encouraging or suggesting to employees that they abandon their union activity and form their own committee to bargain with Respondent.

(f) Interfering with the formation of, assisting, or otherwise interfering with the operation and ad-

ministration of the employees' committee or any other plant committee or labor organization of its employees.

(g) Recognizing and bargaining with the employees' committee or any successor thereto as the representative of its employees for the purpose of dealing with Respondent concerning rates of pay, wages, hours of employment, or other terms and conditions of employment, unless and until such committee has been duly certified by the National Labor Relations Board as the exclusive representative of said employees.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from the employees' committee as the representative of its employees for the purposes of collective bargaining unless and until said labor organization has been duly certified by the National Labor Relations Board as the exclusive representative of said employees.

(b) Mail a copy of the attached notice marked "Appendix"<sup>8</sup> to each employee who was on its Kingsbury, Indiana, facility payroll on the date final notice was given of the plant's closure. Such notice is to be mailed to the last known address of each employee. Copies of said notice, on forms provided by the Regional Director for Region 25, shall, after being duly signed by Respondent's representative, be mailed by Respondent immediately upon receipt thereof.

(c) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

*Inc.*, 234 NLRB 1265, 1272 (1978). The complaint specifically alleges as unlawful the conduct found herein to be violative of Sec. 8(a)(2), and merely fails to allege a violation of this particular subsection of the Act. The circumstances surrounding the formation of the employees' committee were fully litigated in connection with the 8(a)(1) allegation. See, e.g., *Maxi Mart*, 246 NLRB 1151 (1979); *Keystone Pretzel Bakery, Inc.*, 242 NLRB 492 (1979). Accordingly, Respondent is not prejudiced by our finding herein.

<sup>7</sup> In his exceptions, the General Counsel notified the Board that, prior to the date exceptions were filed, Respondent notified the Regional Director for Region 25 that it is no longer operating at its Kingsbury facility. The General Counsel therefore requests that, in lieu of the customary posting at that facility, Respondent be required to post a notice at its present places of business as well as to mail copies of the notice to the employees employed at the Kingsbury facility at the time the unfair labor practices were committed and those employed at the time Respondent ceased operations at this facility. Since Respondent's other facilities were not involved in this proceeding, a posting requirement as to them is unwarranted and unnecessary. See, e.g., *Cerro CATV Devices, Inc.*, 237 NLRB 1153 (1978). However, in light of the circumstances we shall require that, in lieu of posting, copies of the notice be mailed to those employees on Respondent's Kingsbury payroll on the date final notice was given of the plant's closure. *Northridge Knitting Mills, Inc.*, 225 NLRB 1054 (1976).

<sup>8</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we

have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate employees regarding their union sentiments and support.

WE WILL NOT threaten employees with reprisals if they engage in protected concerted activities.

WE WILL NOT give employees the impression that their union activities are under surveillance.

WE WILL NOT improperly interrogate employees concerning allegations and issues raised in any complaint issued against us by the Board's General Counsel.

WE WILL NOT encourage or suggest to employees that they form their own committee to bargain with us and abandon their union activity.

WE WILL NOT interfere in the formation of, assist, or otherwise interfere with the operation and administration of the employees' committee or any other plant committee or labor organization of our employees.

WE WILL NOT recognize and bargain with the employees' committee or any successor thereto as the representative of our employees for the purpose of dealing with us concerning rates of pay, wages, hours of employment, or other terms and conditions of employment, unless and until such committee has been duly certified by the National Labor Relations Board as the exclusive representative of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from the employees' committee as the representative of our employees for the purposes of collective bargaining unless and until said labor organization has been duly certified

by the National Labor Relations Board as the exclusive representative of our employees.

RANDALL E. WHEELER, KEVIN E. WHEELER, AND EDMUND J. WHEELER, A GENERAL PARTNERSHIP D/B/A WHEELCO CO.

## DECISION

### STATEMENT OF THE CASE

RUSSELL M. KING, JR., Administrative Law Judge: This case was heard by me in LaPorte, Indiana, on March 7, 8, and 9, 1979, and April 23 and 24, 1979. The initial charge was filed by the International Molders' and Allied Workers' Union,<sup>1</sup> AFL-CIO-CLC (the Union), on February 3, 1978, and an amended charge was filed on March 29, 1978. The complaint was issued by the Regional Director for Region 25 of the National Labor Relations Board (the Board) on behalf of the Board's General Counsel on March 30, 1978, alleging certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) during the period between November 1977 to November 1978, including the unlawful discharge of an employee on January 23, 1978.<sup>2</sup>

Upon the entire record,<sup>3</sup> including my observation of the demeanor of the witnesses,<sup>4</sup> and after due consideration of the briefs filed herein by the General Counsel and the Respondent (*pro se*), I make the following:

<sup>1</sup> Denzil D. Wilson, an International staff representative of the Charging Union, appeared on behalf of the Union and was present throughout the case.

<sup>2</sup> Hereafter, all dates in July through December will be in 1977 and all dates in January through June will be in 1978, unless otherwise indicated. The pertinent parts of the Act provide as follows:

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 . . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . .

• • • • •

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . .

<sup>3</sup> The errors in the transcript have been noted and corrected.

<sup>4</sup> The facts found herein are based on the record as a whole and upon my observation of the witnesses. The credibility resolutions herein have been derived from a review of the *entire* testimonial record and exhibits with due regard for the logic of probability, the demeanor of the witnesses, and the teaching of *N.L.R.B. v. Walton Manufacturing Company*, 369 U.S. 404, 408 (1962). As to those testifying in contradiction of findings herein, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. *All* testimony, regardless of whether or not mentioned or alluded to herein, has been reviewed and weighed in light of the *entire* record.

## FINDINGS OF FACT

## I. JURISDICTION

The pleadings and admissions herein establish the following jurisdictional facts. At all time material herein, the Respondent partnership (the Company) has maintained its principal office and place of business at Kingsbury, Indiana, the facility involved herein, and is, and has been at all times material herein, engaged at said facility and location in the manufacture, sale, and distribution of overseas marine containers and related products. During the 12-month period prior to the issuance of the complaint herein, the Company, in the course and conduct of its operations described above, sold and shipped from the said facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Indiana. Thus, and as admitted, I find and conclude that the Company is now, and has been at all time material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

As also admitted, I find and conclude that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

## A. Background

Around December 1 several employees expressed interest in union representation. A campaign was commenced, signed union authorization cards were obtained, and the Union filed its representation petition on December 13 (Case 25-RC-6800). A Board-conducted election was held at the plant on January 13 and the Union lost 14 to 1 (not including 4 challenged ballots), with 19 eligible voters. No postelection objections were filed by the Union, but the Union did file its charge in this case on February 3. On November 20, 1978, in LaPorte, Indiana, the date the case was originally set for hearing, the parties reached an informal but written all-party settlement, based on the original complaint, as amended. On January 16, 1979, the Acting Regional Director for Region 25 of the Board withdrew and vacated the settlement agreement for certain noncompliance by the Company,<sup>5</sup> and reissued the complaint as amended (three times prior to the settlement).

The Company was not represented by an attorney at the settlement on November 20, 1978, nor was it represented by an attorney at the hearing in the case in March and April 1979. At the hearing the Company was represented by two of the three partners, brothers Randall (sometimes called Randy herein) and Kevin Wheeler (both sometimes called the Wheelers herein). The third partner is their father who apparently no longer takes an active role in the operation of the company. The Wheelers split their time between the Kingsbury facility (solely involved herein) and another facility in Chicago, approximately 2-1/2 hours away by car. At the Kingsbury

plant the Wheelers were the only "supervisors" present or available although they appointed various "straw bosses" or "section leaders" who assigned work to four or five employees working with or under them. The facility itself consisted of two buildings approximately 50 by 100 feet. The number of employees averaged approximately to 20 to 25, but employee turnover was large, averaging 50 to 60 employees in 1977. The employees included welders, painters, and other allied workers. The Company, at the Kingsbury plant at least, had only one customer for the marine containers produced there.

On January 23, 10 days after the election, the Wheelers discharged four employees including Truman King, whose discharge is the only one alleged to be unlawful in the complaint. In addition to the prehearing amendments, the complaint was amended three times during the hearing. The complaint itself alleges in excess of 20 incidents of alleged unlawful interrogation, impressions of surveillance, threats, solicitation, promises of benefits, coercion, and other wrongful acts on the part of the Wheelers ranging in time from November 1977 to November 1978, some 11 months after the election. Also alleged is unlawful discrimination regarding wages against employees Kell and Severs, and regarding King, the improper withholding of a scheduled Christmas bonus and his alleged discriminatory discharge. Employees Kell, Severs, and King were the initial and prime supporters for the Union. The complaint in many instances lacks specific dates, and in this respect is awkwardly broad or general.<sup>6</sup> Likewise, of course, much of the testimony is broad, general, and uncertain. In many cases it is difficult (if not impossible) to connect chunks of testimony to a specific allegation in the complaint, both by time and description.<sup>7</sup> The General Counsel called some nine witnesses and the Company called seven. Some 37 exhibits were introduced and admitted, 24 by the General Counsel and 13 by the Company. The summary of the testimony in the case will often appear disjointed and it lacks specifics, but given the testimony and record in the case, the summary represents my best efforts under the circumstances.

B. Summary of the Testimony and Evidence<sup>8</sup>

Union International Staff Representative Denzil D. Wilson testified that he had received the name of employee Gary Kell from a representative of another union local in LaPorte and that, on December 1, he and Kell met. At this meeting he gave Kell a number of union authorization cards and Wilson testified that, on December 4, Kell returned signed cards of all employees with the

<sup>6</sup> Many allegations contain language such as "unknown date in December 1977," "unknown date in February or March 1978," "on or about several unknown dates between December 15, 1977 and January 13, 1978," and so forth.

<sup>7</sup> There was also no evidence presented in support of a number of the allegations in the complaint.

<sup>8</sup> The following includes a summary of the testimony of the witnesses appearing in the case. The testimony will appear normally in narrative form, although on occasion some testimony will appear as actual quotes from the transcript. The narrative only and merely represents a summary of what the witnesses themselves stated or related, without credibility determinations unless indicated, and does not reflect my ultimate findings and conclusions in this case.

<sup>5</sup> The controversy involved backpay to be received by employee Truman King and a company debit of unemployment compensation by the State of Indiana. The amount involved was approximately \$300.

exception of one or two. The representation petition was filed with the Board on December 13 and the election was set for January 13. Wilson testified that, between the filing of the petition and the date of the election, three union meetings were held, to which all of the employees were invited. The first meeting was on December 27 and only employee Truman King attended. The second meeting was on January 4 and was attended by 12 employees including Kell, King, Paul Severs, and Gayle Cunningham. The last union meeting before the election was held on January 11 or 12, at which 13 employees attended and at which employee King was appointed the union observer at the upcoming election.

Robert Egolf testified as a present employee of the Company. He was originally employed in June 1977, later quit, and was again rehired in September 1977 and remained until January 23, 1978. He was later and again rehired October 30, 1978. Egolf testified that, on January 23, he met with both Randy and Kevin Wheeler in the office and that Kevin told him he was "goofing around," whereupon he was terminated. Egolf further testified that he was told he had a possibility of being a good welder and would be called back to work in a "couple of weeks." He in fact was asked to return in several weeks but refused reemployment because he had obtained another job at the time. He was subsequently reemployed by the Company on October 30. Egolf also testified that he signed a question sheet prior to November 20, 1978, apparently at the request of Randy Wheeler, further indicating that there was no information or pressure placed on him regarding the question sheet, although Randy Wheeler did not indicate that he had a choice as to whether or not he could complete the sheet.<sup>9</sup>

Employee Gary Kell worked for the Company from June 1977 to June 1978. Kell testified that in mid-November about 15 of the employees began talking about a union. He then called Union Representative Denzil Wilson by phone and, on December 1, Wilson came by his home and left 20 to 25 union authorization cards with him. The following day, Kell related that he signed a card and obtained signatures at work. According to Kell, Wilson picked up the signed cards from him several days later.

Kell testified that "around Thanksgiving" he told Randy Wheeler that a nearby company needed spray painters and that he was going to apply. According to Kell, Randy Wheeler then indicated he would give him a 40-cent-per-hour raise (\$4.35 to \$4.75), effective the following Monday. Kell related that the following week he did not get the raise and he questioned Randy Wheeler about this fact, and that Wheeler replied that he could

not talk about the matter at that time. Kell indicated that Wheeler would "say nothing." Kell testified that sometime in December he talked to Kevin Wheeler about the raise and was informed that nothing could be done about the raise until the "union deal was settled," after which he would get the raise retroactive to the date promised. In later testimony, however, Kell stated that he had asked for a raise only twice, the first time being approximately 1 month after he was hired. Kell further related that he did not "remember" receiving any raise in October.<sup>10</sup>

Kell testified that sometime in December both Randy and Kevin Wheeler talked to each employee individually about the Union, and that when they spoke to him Randy Wheeler asked him why he wanted a union and what a union could do that he could not do, to which he replied better working conditions and better insurance. Kell went on to testify that on several occasions both Randy and Kevin Wheeler would approach him prior to the election and on the day of the election, and would say various things including, "You know what I promised you." Kell indicated that he did not know what Wheeler meant by this remark. According to Kell, further remarks included "You know how to vote" and "I'm counting on you." Kell related that, sometime within the 3-week period prior to the election on January 13, an employee meeting was held at the plant, attended by all employees together with Randy and Kevin Wheeler. Kell testified that at this meeting Randy Wheeler announced that there could be no further overtime because some "spineless individual" had "reported us to the Labor Board."<sup>11</sup>

Kell testified that on January 23 he met alone with Randy and Kevin Wheeler, as did most other employees on that date. According to Kell, Kevin Wheeler suggested that he had been "waiting for this," to which he (Kell) replied, "Yes, I have been waiting for the money I was promised." Kevin Wheeler then replied that they had not promised him any raise, that he was lucky he did not get fired, and that he was a troublemaker because he started "a union deal." Kell was, however, given a 40-cent-an-hour raise at that time. According to Kell, 2 or 3 months after the election he was asked to complete the question sheet, relating that he had to sign it because, "They told me I had to sign it."

Sometime in December an inspector from the company's only customer, John Palkovics, came to the plant to inspect completed boxes. Kell related that he accompanied Palkovics on this inspection tour and at one point Palkovics asked to have the boxes lifted up with a forklift so that he could inspect the underside. According to Kell, they both went back inside the building where all the employees were "standing around and talking." Kell further related that he asked someone to go out and op-

<sup>9</sup> This case was first set for hearing November 20, 1978. Prior to that date and apparently in partial preparation for the hearing, Randy and Kevin Wheeler drafted a question-and-answer sheet consisting of 13 questions dealing with whether or not they, or the Company, were guilty of any of the unfair labor practices alleged in the complaint. Most of the employees were asked to complete this question sheet, and apparently most employees completed the sheet. Those who completed and answered the question sheet and who also testified in this case were questioned about the sheet and their particular sheet was admitted into evidence herein. With the admittance of each question sheet during the hearing, the General Counsel moved to amend the complaint alleging a violation in the soliciting and completion of the question sheet by the employee.

<sup>10</sup> Payroll documents admitted into evidence indicate that in mid-July 1977 Kell received a raise of \$1 per hour (\$3 to \$4 per hour), and that in mid-October he received a raise of (35 cents per hour to \$4.35).

<sup>11</sup> This reference was to a complaint that employee King had filed with the Wage and Hour Division of the U.S. Department of Labor. Controversial in this case is whether or not Wheeler actually knew that it was King who had filed the complaint, and whether or not he was actually looking at King when he made the remark at the employee meeting.

erate the forklift and according to Kell "everybody turned around and walked away." Kell went on to add that Palkovics "got mad" and left. Kell indicated that neither Randy nor Kevin Wheeler ever questioned him about the incident later. Kell testified that during his employment he was sometimes late two or three times a week because his daughter ran a high fever "all the time." On May 7, 1978, he received a written warning for missing 10 days of work after April 13, 1978, some of said days having been unexcused. He further testified that during his employment he was never told that his work was deficient, adding that he and other employees were loaned money by the Company on occasion.

Employee Jeffrey Jackson worked for the company from July 1977 to January 23, 1978, when he was terminated. He was again rehired on November 13, 1978, but quit 2 weeks later. Jackson executed the question sheet prepared by the Company at the request of Randy Wheeler, answering no to the questions dealing with whether or not unfair labor practices had been committed. Jackson testified that on January 23 he was called into the office before Randy and Kevin Wheeler, and Kevin Wheeler thereupon indicated that there had been "too much playing around" and that he was not needed "right now," although he might be called back in a "couple of weeks." Jackson further testified that three other employees were discharged on January 23, and that in his opinion the Company did have just cause for these terminations.

Employee Bruce Cunningham was first employed by the Company in June 1973 and worked for 2-1/2 years before quitting. He was rehired in December 1977. Cunningham attended the employee meeting in the plant in December, presided over by Randy and Kevin Wheeler. Regarding this meeting, Cunningham testified that Randy Wheeler stated that, according to a magazine article he had, there was a "decline in . . . people wanting unions in the United States." According to Cunningham, Wheeler also stated that some "spineless individual" had turned him into the "Wage and Hour Control Board." A further employee meeting was held approximately a week before the January 13 election and according to Cunningham it was a "beer bash" at the Kingsbury Inn. Employee King was discharged on January 23 and, according to Cunningham, in the fall of 1978 he had a discussion with Kevin Wheeler during which the subject of King's discharge came up. According to Cunningham, he mentioned to Kevin Wheeler that King's discharge was "poor timing," to which Wheeler agreed.

Employee Bruce Cunningham also testified about the establishment of a "late committee." According to Cunningham, there had been much absenteeism and tardiness in late December and early January. As a result, both Randy and Kevin Wheeler discussed the formation of an employee committee to deal with the problem. Cunningham did not really remember when the subject of this committee first came up, whether before or after the January 13 election. Cunningham went on to testify that a week or so after the election a "late committee" was formed and that at Randy Wheeler's request he served on the committee, along with four other employees. The purpose of the committee was to determine the legitima-

cy of later arrivals or absences. The committee had written rules, some of which were suggested by the employees, and the committee met each week on Friday. Cunningham went on to testify in February Randy Wheeler informed him that he had been mailed an "overtime" paycheck, but that he (Wheeler) wanted it back. Cunningham indicated that he agreed but that upon receipt of the check he later changed his mind, cashed the check, and so informed Randy Wheeler. According to Cunningham, Randy Wheeler then stopped payment on the check and he thereafter reported the matter to the "Wage and Hour Control Board."<sup>12</sup> Cunningham related that Randy Wheeler ultimately let the check go through, although he was mad about the situation. Cunningham testified that several weeks after the "check incident" he quit because he felt his relationship with Randy Wheeler was strained over the matter.

Employee Gayle Cunningham first came to work for the Company in May 1973 and left July 1978; he was rehired in November 1978. At the January 13 union election, he was an observer for the Company. Regarding the December employee meeting at the plant, Cunningham testified that Randy Wheeler first spoke of the decline of unions and "about companies having them put out." According to Cunningham Wheeler also announced that some spineless individual turned him in to the Wage and Hour Division, and that this remark was made while he was reading from a "piece of paper" in his hand. Cunningham testified that a week before the January 13 election Randy Wheeler mentioned a committee and stated that "instead of filing for a union we could have brought a petition to him and then he could have drawn a contract up . . . without involving a union." Cunningham related that this remark was made to him during what the employees called "gripe sessions." Cunningham later recalled "something" about talking to several employees, including Tharp Magley and Dave Pagles, about drawing a contract with the company without a union. Cunningham added that neither Randy nor Kevin Wheeler was present when this discussion took place.

Employee Cunningham further testified regarding the formation of a committee. According to Cunningham, a week after the election he met with Randy Wheeler and employee Dave Pagles, and Wheeler asked if they had come up with any kind of contract or committee.<sup>13</sup> He and Pagles answered that no action have been taken. Wheeler then instructed them to go ahead and "do it." According to Cunningham several days later the employees got together and "elected" four employees, including himself, employees Wendell Magley, Joe Koepke, and Victor Schultz, to the committee. Several days later they informed Randy Wheeler of the election of the committee members and, according to Cunningham, Wheeler then indicated that the committee should proceed to "draw up a contract." The committee then

<sup>12</sup> This complaint to the "Wage and Hour Control Board" was later in time and not the subject of the "spineless individual" remarks made at the employee meeting in December.

<sup>13</sup> In later testimony, Cunningham was asked whose idea the committee was to which he replied, "I think it was part of the employees."

met, thereafter solicited ideas from other employees, and then met with both Randy and Kevin Wheeler "about the second week of February," and presented certain proposals including request for more paid holidays and sick days, an "absentee proposal," and a request for a better insurance plan. Cunningham related that Randy Wheeler agreed to no sick days but one additional paid holiday, and that Kevin Wheeler indicated he would contact the Company's insurance representative regarding better insurance coverage. According to Cunningham, the formation of an absentee or "late committee" was also discussed. Cunningham related that after consulting with employees he and the other members of the committee met again with Randy and Kevin Wheeler in late February, and that they came to an agreement of sorts which was later reduced to writing and posted in the shop.<sup>14</sup>

Gayle Cunningham further testified that, a week or so before the election, Randy Wheeler, in his presence and in the presence of employee Paul Severs, told employee Truman King, "You have worked harder in the last 30 days [than] you worked here since the day you started here." According to Cunningham, several days after King was discharged (January 23) he asked Randy Wheeler why King had been discharged in light of the remark he had previously made, and Wheeler replied that he did not remember the statement and that King was discharged because he was not "performing his duties right." Cunningham related that he had earlier, in December, told Randy Wheeler that King's father was treasurer of a union or a union official with another company.

Gayle Cunningham went on to testify that "around Christmas" Kevin Wheeler stated to him, "I don't think you are for the Union, you are going to vote no, right," to which he replied, "Yes." Cunningham further testified that, a week before the election, Kevin Wheeler told him and employee Pagles that "he didn't think we had any problem about winning the election, he thought 75 percent of the people out there were going to vote no anyway." Cunningham related that he was first contacted about the Union by employees King and Kell in November and that during the first week in December King asked him to sign a union authorization card, which he did. He explained that he thought the purpose of the card was to "see how many people were interested in the Union . . . [and] to bring a union representative down to talk to us." Cunningham added that he was strongly against the Union from the beginning and he had so informed both Randy and Kevin Wheeler. Cunningham indicated that he was also asked to sign or execute the question sheet by Kevin Wheeler, and that Wheeler had said it was up to him as to whether or not to fill in and sign the sheet.

Employee Paul Severs has worked for the Company continuously since July 19, 1977. He testified that he signed a union authorization card on December 2 and obtained four other signed cards. According to Severs

around the first of December the Union "became general knowledge" and that he, King, and Kell were the primary organizers. Severs testified that "at work" Randy Wheeler told him that it was "illegal" to solicit union authorization cards during working hours.<sup>15</sup> Regarding the "Wage and Hour Board" complaint, Severs related that just before Thanksgiving he accompanied Truman King when King filed a complaint with the U.S. Department of Labor and that subsequently King, in his presence, told Randy Wheeler that he had "turned [him] into the Wage and Hour Division." Severs related that he also told Randy Wheeler on that occasion that he had accompanied King when the complaint was filed.

Severs testified that in October 1977 he asked Randy Wheeler for a raise and Wheeler agreed to a total raise of 50 cents an hour commencing with 25 cents an hour December 15 and, an additional 25 cents on March 15. Severs related that he did not receive the raise on December 15 and, approximately a week thereafter, at an employee "gripe session," Randy Wheeler spoke about a magazine article which mentioned the decline of unions and also mentioned that no raises could be granted as they may be considered a bribe in light of the "union dealings."<sup>16</sup> Severs went on to testify that Wheeler also indicated that he would see if they could afford raises, further mentioning that some "spineless individual" had turned him in to the Wage and Hour Division. At this meeting, Severs related that Kevin Wheeler also stated he would look into better insurance benefits. Severs testified that at a later "gripe session" Kevin Wheeler stated he had talked to the insurance man, and then asked the employees "what type of things people would like," to which there were several responses. According to Severs, this "gripe session" was held in late December or early January. Severs testified that approximately 2 weeks before the election Randy Wheeler asked him what he thought would benefit the Company, to which he replied better wages, sick days, more holidays, and adequate tools. Severs went on to testify that approximately a week and a half prior to the election, he was (or became) a member of the employee committee that met with Randy Wheeler. According to Severs, other committee members were Gayle Cunningham, Victor Schultz, and Lloyd Tharp.<sup>17</sup> Severs related that the subject of the meeting was the "different individual things" employees wanted in a "company contract," including holidays, sick days, and what to do about absenteeism and tardiness.

Severs testified that on January 23 he was called in before Randy and Kevin Wheeler. Kevin Wheeler stated that he was "an instigator of union activity," was "discontented" with his job, continuously late and absent, and failed to tighten nuts and bolts properly. Wheeler then indicated that he would like Severs to quit his job. Randy Wheeler then said that they could give him some

<sup>15</sup> No date was ever mentioned.

<sup>16</sup> This "gripe session" is obviously the December employee meeting testified to by a number of employees in this case.

<sup>17</sup> Employee Cunningham testified that this meeting occurred approximately 2 weeks after the election and that the committee consisted of himself (Cunningham), Wendall Magley, Joe Koepke, and Victor Schultz.

<sup>14</sup> This so-called written agreement in fact contained only "guidelines" for lateness and absences. Holidays had been verbally discussed and agreed to earlier before the posting of the so-called agreement. Insurance benefits were approved several months later according to Cunningham.

time to think about quitting, whereupon the conversation ended. Several days later, according to Severs, Randy Wheeler asked if he had come to any decision, to which he replied that he could not quit unless he "had an opportunity to find another job." Randy Wheeler then asked if he wanted some time off, and he replied that he did not know, but later that day he asked for and was granted the following day off. Severs testified that a week thereafter he went to the plant to get his check and Randy Wheeler "asked how much more time [he] wanted," to which he inquired as to how much he could have. Wheeler then replied 2 weeks. Severs related that on February 18 (Saturday) he called the plant and told Randy Wheeler that he had obtained another job commencing the following Monday. Severs related that this new job resulted in a cut in pay of \$1.25 per hour and thus he asked Randy Wheeler if he could work part time at night, and Wheeler asked him to come in Monday and talk about it. On Monday, February 20, and after 4 p.m., Severs indicated that he came to the plant and was hired part time, 2 hours on Tuesdays and Fridays, and 4 hours on Wednesdays, Thursdays, and Fridays. Severs indicated that he continued both jobs for 3 weeks and when reporting for work on Thursday Kevin Wheeler said that they cutting back on "energy," and that he could no longer work part time, adding "in a week maybe we can work it back out." Severs indicated that he checked back several times thereafter but he was not rehired. In cross-examination, Severs admitted that in November 1977 he applied for a job with another company because that company had an "injury policy" and he had slipped on the ice at work, and that he used this as a excuse to leave work. Severs also conceded that three other employees accompanied him on this occasion, including employee Truman King.

Severs testified that he attended the company party 2 days before the election and that he overheard Randy Wheeler state that during the last month and a half employee Truman King had been the best worker that he had. Severs related that in his opinion the quality of King's work was "good to [his] knowledge." Severs went on to testify that hammers were not actually thrown through the air but were "slid" on the floor from one worker to another who needed it. According to Severs, this practice or procedure was commonly called "throwing" the hammers. Severs added that he and employees King, Kell, and Rick Johnson "threw" hammers "periodically, once a week."

Truman King was first employed by the Company in April 1976 and was discharged on January 23, 1978. During this period he worked as laborer, welder, and painter. King testified that talk about the Union began in mid-November after Randall Wheeler had refused to grant employees the Monday after Thanksgiving as a day off. King indicated that he strongly supported and campaigned for the Union, signing a union authorization card on December 2. King testified that he filed a complaint with the Wage and Hour Division of the U.S. Department of Labor on November 30 because Randall Wheeler had refused to give him overtime pay, insisting that overtime would be paid as "straight" time. King related that employee Severs accompanied him when the

complaint was filed and that the purpose of filing the complaint was to get overtime pay for all the employees. King indicated that after he filed the complaint he told several other employees, including employee Gayle Cunningham, about having filed the complaint.

King testified that in late December he also attended the employee meeting where either Kevin or Randall Wheeler informed the employees of the decline of unions and of the "disadvantages" of unions. According to King, Randall Wheeler, while looking directly at him, further stated that "some spineless individual" had turned him in to the Wage and Hour Division. Wheeler also mentioned that instead of going to the Wage and Hour Division that the individual should have "talked it out with him first." King related that, several weeks prior to the election at an employee meeting at the plant, either Randall or Kevin Wheeler stated that instead of "getting a union representative we should have got our old committee together and hashed out the problems with them instead of getting an outsider."

King testified that on January 9 or 10 Randall Wheeler approached him and stated that he had heard he was going to "turn him in to OSHA," and that if he did turn him in to "one more government agency [he] would be his enemy for life." King related that he denied he had any ideas of turning the Company in to "OSHA." King further related that approximately a week before the election Kevin Wheeler approached him and stated "I can't change your mind about the Union, right," to which he replied, "Right." King testified that on January 11 there was both an employee meeting in the plant and a beer party that evening at the Kingsbury Inn. At the employee meeting, which King characterized as "more or less like a gripe session," employee Kell asked something about ventilation in the paint area. At the beer party later on most employees were present as were Kevin and Randall Wheeler. King testified that he got "drunk before it was over." He related that during the party he told Randall Wheeler that he was the one who had gone to the Wage and Hour Division, and that Severs had accompanied him. King further related that at the party Randall Wheeler told him "in the last month or month and a half that [he] was the best worker he had in the building." Regarding his sobriety at this point, King testified that he was "half and half." King testified that on the following day (January 12) Randy Wheeler approached and stated that he thought that "section leaders" Cunningham, Pagles, and McCalister "ought to have the right to vote in the election . . . [and] not to challenge their vote." According to King he responded that he would not challenge them, but to the contrary he did so on the following day at the election.

King testified that, on January 23, he arrived approximately 5 hours late for work and that close to quitting time (4:30 p.m.) he was told to go to see Kevin and Randall Wheeler. When reporting, he was discharged for failure to do his job, lateness, and missing work, and for refusing to drive the forklift for their customer's inspector John Palkovics several months previously. King related that he then called Kevin Wheeler a "liar" and



stated he was going to "turn [them] into the National Labor Relations Board."

Regarding the so-called forklift incident, King testified that employee Gary Kell came inside the building and asked him if he would go out and drive the forklift for the customer's inspector, and he responded that he would not because it was "too cold." King conceded that he knew who the inspector was and that at the time the inspector was standing by the door about 40 to 50 feet away. King was "not sure" if any other employees were standing around at the time, but related that several days later Randall Wheeler told him that if Kell ever asked him to "do something like drive the forklift," that he should comply with such a request.<sup>18</sup> King also testified regarding a Christmas bonus, indicating that his first year with the Company (1976) he received a Christmas bonus of "\$25 or his first year with the Company (1976) he received a Christmas bonus of "\$25 or \$30," as did four other employees. King related that in December (1977) he and all other employees received a bottle of whiskey and some employees additionally received cash bonuses but that he did not. However, he made no inquiry as to why he had not received a cash bonus.

King testified that in October 1977 his job as a painter was changed to that of a welder and that he was told the reason for this change was that employee Mark McCalister was being made supervisor of the "whole building" and if he had remained as a painter "down in the paint area that the people [he] worked over before would show favoritism for [him] rather than do what Mark said."<sup>19</sup>

King testified that prior to his discharge he was never criticized for his work or for lateness, and that he performed maintenance on the painting guns every day. King conceded that Randy Wheeler had told him in August or September to try to keep the hoses leading to the paint guns free of paint, and further conceded that Wheeler would "tell him once a week to be sure and . . . clean the hoses out at the end of every day," which he indicated that he did. King denied that he ever "dropped a pistol from a painter," but conceded that the paint area was not kept clean, adding that "you just couldn't keep it clean." King also conceded that paint often dried in the paint guns, but he blamed this on others who used the guns and failed to clean them properly. Regarding wage increases, King indicated that sometime in late November there was some discussion regarding wages but he was not sure where it occurred or who was present. Regarding the throwing of hammers, King testified that two or three times a week he would "slide" a hammer on the floor to another employee who was not within reaching distance, as did other employees. He also conceded that he "may have" misplaced some tools. At one point in his testimony, King was asked whether he was disruptive at work anytime between November 28 and January 23 (his discharge date), and King answered, "I don't remember." King

denied painting any obscene pictures on a "heater" but admitted that approximately 8 months prior to his termination he had "pitched pennies" during working hours two or three times. He denied ever disregarding any instructions from either Kevin or Randall Wheeler but admitted both "running through the building," and the fact that he "clowned around," but added that other employees did the same thing. King also admitted that he told Randy Wheeler that he could get a job anytime at the company his father worked for, also conceding that he left work to apply for another job in November to "better himself." King testified that long after his discharge and on or about June 1 he received a letter from the Company asking him to come back to work, to which he did not respond. King added that he would have returned to work if he had been given "all the backpay back."

Lloyd Tharp testified as a present employee of the company and was employed April 1977. Regarding Randall Wheeler's "spineless individual" remark at the December employee meeting, Tharp testified that Wheeler was looking "to the floor," and added that Wheeler in general never looked at employees when he talked to them. Tharp related that Kevin Wheeler discussed upgrading hospital insurance, dental coverage, and life insurance with him in October 1977. Regarding the employee committee, Tharp testified that he and employee Wendall Magley initiated conversations with Kevin Wheeler in December to form an employee committee in charge of work rules and benefits. Tharp added that thereafter there were several employee meetings about the committee, which was eventually formed in February or March 1978. Tharp also testified about an incident involving employee Kell and a "crowbar" incident. According to Tharp in February or March he saw Kell, dressed in nonwork clothes, with a crowbar in his hand, going into the office. Tharp related that when Kell came out of the office he asked him "Would you have hit [Randy Wheeler] with the crowbar," to which Kell replied, "Yes, I would if I hadn't got what I wanted." Tharp also testified that employee King had told him "more than once" that his father worked at a nearby foundry and that he could get a job there anytime. In late 1977, Tharp indicated that he complained to Randy Wheeler about "people missing too many days," and that Wheeler responded by stating, "They were going to have to do something about it." Tharp denied that he was ever questioned in any way about the union campaign or about any union activities which he may have been engaged in.

Employee Wendall Magley testified as a present employee and had been employed by the Company for 2 years. In early or mid-1978 he became a "section leader." Magley also testified that Randy Wheeler was not looking at anyone when he made his "spineless individual" remark at the December employee meeting. Regarding the committee, Magley testified that a late committee was established in the summer of 1977, and that this committee was again reestablished in February 1978. Magley added that this committee was established at the request of the employees. Magley was also present when

<sup>18</sup> Kell testified that the employees were all standing around and talking when Kell asked for help, and that "everybody turned around and walked away."

<sup>19</sup> At the time of the transfer, King was apparently the "straw boss" or section leader in the paint area.

Kell entered the office with the crowbar and, regarding the incident, Magley testified that Kell was in nonwork clothes and was in fact carrying a crowbar. Magley described the incident as "not a usual occurrence." Magley also overheard employee King say once that he could get a job in a nearby foundry. He further indicated that neither Kevin or Randy Wheeler ever questioned him of his sentiments about the Union.

Employee David Pagles testified as a present employee and had worked for the Company for 5 years. He was a "straw boss" and a welder, and several employees worked under him. He was paid 75 cents per hour more than these employees. Pagles testified that there was no scheduled breaks other than lunch at the plant and, regarding a late or tardiness procedure, Pagles added that "late procedures" were attempted in late summer 1977 at the request of a group of five employees, including himself and employees King, Scott, Gayle Cunningham, and Thompson. Pagles added that the late procedures agreed on were put into effect and were continued until November 1978.

Pagles testified that employees Egolf and Jackson had worked under him and were also discharged on January 23. According to Pagles, Egolf "wasn't doing his work . . . was absent a lot . . . was late a lot . . . and most of the work that he had done had to be redone." Pagles related that he voiced these complaints to Randy Wheeler, and that the same deficiencies were also reported to Wheeler regarding employee Jackson. Regarding the "spineless individual" remark of Wheeler in December, Pagles testified that Wheeler was looking at a sheet of paper which he was holding in his hand when the remark was made. Regarding the desirability of the Union, Pagles testified that he and several others employees, including Gayle Cunningham, Wendall Magley, Lloyd Sharp, and several others decided they did not need a union and that they could form a committee which "could handle it for ourselves." Pagles indicated that this occurred before the election, and they also consulted with both Randy and Kevin Wheeler about their ideas. After the election, Pagles related that some work changes were made through the committee effects. Pagles further testified regarding an incident involving four employees leaving the plant in late November. Pagles indicated the employees were Ron Noble, Charles Rudd, Severs, and King. According to Pagles, Rudd and Noble told him that they did not feel well, and Severs stated that he slipped and hurt his back. King gave no reason for leaving. Employees Rudd and Noble returned later in the day, explaining that they had applied for another job. Regarding employee Paul Severs, Pagles further testified from September through January Severs worked on "rear ends" and that he had to turn in Severs "at least once a day" for poor workmanship. Pagles added that he talked to both Severs and Kevin Wheeler regarding this problem. Pagles testified that neither Kevin nor Randy Wheeler ever interrogated or questioned him regarding union activities during or after the campaign.

Robert Scott testified as a present employee, having worked for the company for 5 years. Regarding employee King, Scott testified that King drew "cartoons, jack-

ass" on walls or heaters with employees' names inserted, including his own name. Scott added that King also called him names, including "dog" and "fatboy," and that King once "leapfrogged" over his head. Scott related that he had never seen any employee throwing hammers.

Regarding Randy Wheeler's "spineless individual" remark, Scott also testified that Wheeler was looking at the paper in his hands at the time the remark was made. Regarding the paint bay, Scott testified that its condition held up production "probably once a week," adding that there was "general goofing off" by employees Severs, Johnson, and King in the paint bay. Scott also indicated that these three employees "pitched pennies during working hours" and that once he observed employees King and Bruce Cunningham in a "foot race."<sup>20</sup>

Mark McAlister testified as a present employee and as a "straw boss," indicating that he had worked for the Company some 4 years. Regarding employee King's conduct, McAlister testified that King and employee Bob Bratcher were "clowning around" and Bratcher "ran into the bathroom . . . and [King] threw something at him . . . and it hit the door." McAlister related that King also "cut welding wires on the welding machines when people were welding," and further encouraged employees to "chase" him through the building. McAlister added that King would also "call employees names."<sup>21</sup> McAlister went on to testify that King "very seldom" cleaned paint guns and that he misplaced parts, adding that King's work was "poor," although he had spoken to him about it "on occasions." According to McAlister, King's work did improve "on occasion" in December and January, but "not often," a few times. Regarding employee Kell, McAlister testified that he was not a "competent" painter and that Kevin or Randy Wheeler would speak to him about his work "two or three times a week," as they would also do with employee King. Regarding the employee committee, McAlister testified that the idea for the committee came from the employees alone.

Kevin Wheeler testified as a active partner in the Company. Regarding employee King, Wheeler testified that in May 1977 King was made a "straw boss" or section leader, in charge of the "paint bay and cleaning section," where he remained until late November. In this position, King was in charge of assigning personnel, maintaining and taking care of equipment, seeing that there were adequate supplies, and insuring that the manufactured containers were painted. Wheeler related that one of the Company's suppliers of the substance used for thinning paint and cleaning equipment was only several miles from the plant, with normally 1-day delivery. According to Wheeler, from spring 1977 until January 1978 there were "excessive" purchases of parts for the painting equipment resulting from the lack of proper care and

<sup>20</sup> Employee Gayle Cunningham also testified to the foot race, conceding that he had also participated. According to Cunningham, before the race, employees Scott and King were also racing in the building.

<sup>21</sup> King admitted in testimony that he once leapfrogged around the building over employees and that "goofing off . . . probably" took place in the plant, adding that he "sometimes probably" was involved. He also admitted cutting welding wires, and the fact that he threw an "object"

cleaning of that equipment. Wheeler added that orders for these parts diminished "greatly" after King's termination. Wheeler testified that during King's tenure in the paint section there were "many problems." He related that the section would "fall into disrepair," and was "constantly dirty . . . [and] breaking down." Wheeler further added that the "quality of work was poor, and the quality of work was not anywhere near what we expected it to be." Wheeler testified that King was thus reassigned in late November and Mark McAlister was placed in charge of the building. Upon King's reassignment, Wheeler indicated that his higher salary as a section leader was not reduced and thus he explained to King that he would not receive a raise in the future until other employees caught up with his higher salary. Following King's reassignment, his attitude according to Wheeler became "very sullen and uncooperative." Wheeler added that King's work continued to be "improper" and reflected "deficiencies," and they received complaints from their customer's inspector. King was then switched to another job and the overall assembly line or "flow" thereafter improved. According to Wheeler, the decision to discharge King was a joint one made by him and his brother Randy "throughout the months of December and January." Wheeler also testified to the inspection incident which he indicated occurred in December. According to Wheeler, employee Kell came into the office and related that the inspector was "mad and was leaving the area." Wheeler related that he went out and "chased the inspector down," who was then in the process of driving away. The inspector (Palkovics) then complained that the employees did not care enough to help him out, relating that he and Kell were inspecting containers outside and needed a forklift operator, whereupon they went inside where a number of employees were "standing." The inspector related to Wheeler that he recognized or knew employee King and asked him to operate the forklift, and King responded by stating "Go jump in the lake," adding that he would not go out into the cold.<sup>22</sup> Wheeler indicated that the inspector did remain and that he accompanied him personally "the rest of the day." Wheeler testified that he talked to King about the incident, reminding King of the importance of the inspector and pointing out that he was a "link to our accounts receivable."

Kevin Wheeler went on to testify that in early January the Company's accountant notified him that the Company suffered a net loss in 1977, adding that their projected production rates were never met in 1977, but that production did improve in 1978. Wheeler denied that he ever called Egolf at home after he discharged him, and regarding employee Kell, he denied that he made any promises to Kell or had any discussions about a wage increase, although he did speak to Kell about his work which was performed "less efficiently" beginning in Sep-

tember 1977. Wheeler indicated that his brother Randy was not looking at any particular individual when he made the "spineless individual" remark at the December employee meeting. Regarding the employee committees, Wheeler testified that such a committee was first formed in July 1977 at the employees' request, but was ineffective because most employees with a bad late or absentee record would usually quit before the committee could act. Wheeler went on to add that the second such committee was formed or reorganized in December, again at the request of the employees, and that this committee not only concerned itself with absenteeism but requested discussions regarding "changes in benefits" that would be negotiated. Wheeler related that the employees elected four individuals to this committee during "January and February" and that they eventually "settled" on several changes involving "holidays," "funeral days," and a system for checking on lateness and absenteeism.

Kevin Wheeler went on to testify that, regarding Christmas bonuses, all employees received a bottle of liquor and all but four or five received cash bonuses ranging from \$5 to \$30, with section leaders receiving \$75. The bonuses were based on merit and, according to Wheeler, King was one of the four or five employees not receiving any cash bonuses, including Egolf, Jackson, and Skuttsfield. Regarding the January beer party at the Kingsbury Inn, Wheeler denied that his brother Randall stated King was the best worker they had, or made any other similar remarks regarding King. He also denied that King mentioned anything about his complaint to the Wage and Hour Division at that party, and, regarding that complaint, Wheeler testified that he heard about the complaint when an employee of the Wage and Hour Division came to his office in December, adding that he never learned that it was King until long after he was discharged. Wheeler added that he suspected at the time that the complaint was filed by another company with whom they were in competition for "qualified" welders.

Kevin Wheeler testified that, regarding employee Paul Severs, he had applied for jobs at three other companies, and that he had received reference calls from the companies, adding that the "quality and quantity of [Severs'] work was poor." Wheeler related that, in this light, on January 23 he informed Severs that it would best if he "intensify his efforts to find another job." According to Wheeler, Severs asked for more time and he told Severs that "if he would let me know a day in advance, I would give him a day off," to which Severs replied that he would get another job. Wheeler added that Severs was not a troublemaker, and Wheeler denied that he mentioned the Union on January 23 when he talked to Severs.

Kevin Wheeler testified that in February he was notified by the "Local Power Authority" that he had to cut down on power usage because of the "energy crunch." Thus, he thereafter in February closed down one of the two buildings comprising the plant. Regarding the employee questionnaire which he asked most employees to sign, Wheeler testified that when they received the charges in this case they thought they were "so grossly

<sup>22</sup> This conversation between inspector Palkovics and Kevin Wheeler was objected to by the General Counsel as being hearsay. I concluded that the objection was well founded but allowed the testimony not for the truth of the substance of the conversation, but in explanation of Kevin Wheeler's actions thereafter. However, the fact that the incident occurred essentially as related by the inspector is corroborated by other competent evidence in the record.

unfair and so incorrect" that they decided to prepare the questionnaire and "allow the employees, if they wished, to answer these questions whatever way they felt," and thereafter he and his brother would analyze the answers and "see how much support we had for the feelings we had." Wheeler added that all the employees were given the option to answer or not to answer the questionnaire. Further regarding Kell's salary, Wheeler related that in October Kell was given a 35-cent-per-hour raise "to incent him to do his job . . . to improve upon it." According to Wheeler, at this time Kell was told that it would be difficult for him to receive a raise in the near future because the next raise would put him on a par with "skilled welders" and, since he was not a welder, he would have to do "extraordinary work" to justify receiving the same amount as such skilled welders. Wheeler added that, during Kell's employment, he would ask for a raise "on the average of at least once a week."

Randall Wheeler testified that he and his brother Kevin were the sole operators of the Company and that each altered their time between the plant involved in this case and their other Chicago facility. Wheeler testified regarding King's discharge that several months prior thereto he did "jokingly" remark that King's work had improved, but Wheeler denied that it actually had improved. Wheeler related that he and his brother agreed on the discharge of King on January 23 and that they had been "going toward that conclusion for months." According to Wheeler, King was discharged for "many reasons." Prior to November King's job was to paint with "airless" paint equipment, which he kept in an unclean and thus unsafe condition. He was also careless with other painting equipment, once "dropping the pistol from the top of the container." Wheeler added that the paint equipment "was always in a state of disarray." According to Wheeler, King had a "clowning syndrome" and was "disruptive at work," painting "obscene pictures on a heater, throwing hammers and pitching pennies during work hours." Wheeler conceded that he "may have" learned of the pitching of pennies after King's discharge January 23. Wheeler added that King improperly refused to assist their customer's inspector, and that his attendance was "always bad," indicating that there were 28 weeks out of 1977 that King was not in full attendance. Wheeler did concede that there was no set absence policy during this period and no written rules of any type. Wheeler indicated that King additionally lacked "loyalty" and constantly bragged that he could get a better job anytime where his father worked. Wheeler finally added that King had financial problems and that the Company was continually dealing with garnishments filed against him.<sup>23</sup> Wheeler denied ever telling King that he would be his "enemy for life" if he reported him to another agency. Wheeler also denied that King ever told him that he had filed a claim with the State Wage and Hour Division. Wheeler testified that, in addition to King, three other employees were discharged on January

23, and most remaining employees received a pay raise ranging from between 10 cents to 50 cents per hour. Wheeler related that employee Kell asked for a raise "quite often."

Regarding the committee, Randy Wheeler testified that he first attempted to set up a committee at the request of employees in the spring or summer of 1977, adding that the committee that was formed in January was also the idea of the employees. Wheeler testified that during his talk to the employees in December he did make the "spineless individual" remark but at the time he was looking down at a paper he was reading from, further adding that at the time he did not know King had made the complaint to the Wage and Hour Division. Wheeler denied that he had ever actually asked employee Bruce Cunningham to work "extra hours for straight time," relating that Cunningham had on several occasions worked straight time for extra money, at his request. Wheeler denied that he ever told employee Severs, or any other employee, that he would consider taking away hours already worked for being late or tardy. Wheeler also denied that he held up employee Severs' check so that Severs would report to him and the two could confer. Regarding the employee questionnaire or question-and-answer sheet, Wheeler testified that the sheet was passed out because he thought the allegations in the complaint in this case were "totally unjust and he wanted to have [the employees] . . . given a chance to comment." Wheeler added that there was no "pressure" placed on the employees regarding the questionnaire and that he merely asked them "if they'd fill it out . . . and if they didn't want to, it was perfectly all right."

### *C. Analysis of Testimony and Evidence and Initial Conclusions*

#### *1. Some initial credibility observations*

In my analysis, I will on occasion credit one witness over the other regarding a particular event or incident. However, I will discredit most of the significant testimony of two employees who testified, Truman King and Gary Kell. King displayed a lackadaisical attitude and his testimony in the main lacked precision and decisiveness, and was frequently indefinite in important areas. King's overall demeanor, manner, and attitude led me to the early and steadfast conclusion that his credibility was wanting. Kell appeared to treat his testimony and the case as a game. During cross-examination especially he often came off as victorious when his answers were obviously contrary to those which would have been more desirable to the Company's positions. At times, having grabbed the tiger's tail, he would pursue the victory beyond need by volunteering further comments, as if to "rub it in." In this case, at least, Kell's credibility was lost in his "game," and the victories in my opinion became, perhaps sometime even unintentionally or unknowingly, more important than the truth. Although to a lesser extent than King and Kell, I further discredit portions of the testimony of employee Paul Severs. His testimony in some areas was more specific than that of King

<sup>23</sup> In the State's determination of King's eligibility for unemployment compensation after his discharge, the initial determination was admitted into evidence without objection and states, in part, as follows: "[The employer] has failed to show the claimant intentionally or willfully neglected his duties and damaged employer's property."

and Kell, but reflected an intense animosity to the Wheelers and the Company. Far from enamored with his job, Severs' overall demeanor was lacking and reflected resentment and a desire for retribution. These factors in my opinion rendered Severs' testimony less than creditable in certain specific areas. I do not take lightly credibility determinations, and especially these regarding King, Kell, and Severs. They were initially the primary union supporters and a considerable number of the allegations in the complaint rise or fall on the credibility of their testimony.<sup>24</sup> Thus I would add that in this case, and regarding the three employees, my credibility determinations were early and not overly difficult.

## 2. Interrogation

The complaint alleges some nine or more improper acts of interrogation by the Wheelers between December and April in violation of Section 8(a)(1) of the Act. The testimony gives rise to only four such incidents, the only four mentioned in the General Counsel's brief. Out of the four, one involves the sole testimony of employee Kell and one the sole testimony of employee King.

Kell testified that sometime in December the Wheelers talked to each employee separately about the Union.<sup>25</sup> According to Kell, Randy Wheeler asked him why he wanted a union and what a union could do that he (Wheeler) could not do. The Wheelers denied any such interrogation, and I credit them over Kell, and thus find no violation. King testified that a week to 10 days before the January 13 election Kevin Wheeler asked him, "I can't change your mind about the union, right." Based on Wheeler's general denial of any such remarks or interrogation, I credit him over King and thus here also find no violation. Employee Gayle Cunningham testified that around Christmas Kevin Wheeler stated to him, "I don't think you are for the union, you are going to vote no, right." Wheeler's testimonial denial to any such interrogation was general and I credit Gayle Cunningham's testimony here and find the remark was made and was violative of Section 8(a)(1) of the Act.<sup>26</sup> Employee Paul Severs testified that 2 weeks before the election Randy Wheeler asked him what he thought would benefit the Company. Severs indicated that he replied better wages, sick days, more holidays, and adequate tools. I am given the above interchange only, without mention of the Union. Although the election was several weeks away, Wheeler's inquiry here in my opinion does not rise to a violation of the Act, and thus no violation is found.<sup>27</sup>

<sup>24</sup> Union support later diminished, with only one vote for the Union at the January 13 election.

<sup>25</sup> These talks are uncorroborated by other testimony.

<sup>26</sup> Gayle Cunningham testified as a present employee of the Company. He was against the Union and acted as the Company's observer at the election. His testimony was direct and forthright. His overall demeanor convinced me that his testimony was creditable.

<sup>27</sup> This conclusion is obviously not based on credibility. Even considering that Severs, along with King and Kell, were the primary union organizers, and the union activities were common knowledge throughout the plant and to the Wheelers, in my opinion Randy Wheeler's question was far short of unlawful interrogation.

## 3. The December employee meeting ("spineless individual" remark)

In mid-December there was an employee meeting at the plant during which Randy Wheeler spoke of the decline of unions, and stated that "some spineless individual" had turned him in to the Wage and Hour Division. Employee King's testimony (only) would have Wheeler looking directly at him when the "spineless individual" remark was made, and would further attribute to Wheeler the comment that the employees "should have come to him and talked it out first."<sup>28</sup> All others testifying on the subject failed to mention the additional remark and confirmed that Wheeler was looking down at the time of the "spineless individual" remark. Both Wheelers admitted the "spineless individual" remark and failed to address King's alleged additional remark by Randy Wheeler in their testimony. The General Counsel argues that both remarks were made and that both constitute violations of the Act.<sup>29</sup> I find that only "spineless individual" remark was made, as proven and admitted. Complaints such as the one to the Wage and Hour Division by King are concerted and protected activity under the Act. Wheeler's remark was strong and harsh and constituted an implied threat that he would take some action against the "individual" involved.<sup>30</sup> I thus find that Randy Wheeler's "spineless individual" remark made at the December employee meeting was violative of Section 8(a)(1) of the Act.<sup>31</sup>

## 4. The "committee" and suggestions of independent employee action

Earlier in 1977 a "late committee" existed at the Company but virtually ceased to function. According to employee Gayle Cunningham a week before the January 13 election at an employee meeting Randy Wheeler stated that the employees "could have brought a petition to him and then we could have drawn a contract up between us and him without involving a union." A week after the election Randy Wheeler asked Cunningham, in the presence of employee Dave Pagles, if the employees "had come up with . . . some kind of contract or a committee to draw up a contract for the company." When Cunningham replied that the employees had not, Wheeler told them to "go ahead and do it then." Several days later the employees elected Cunningham and three

<sup>28</sup> King was uncertain however, stating, "I think . . ." Wheeler made such a remark. King had filed the complaint with the Wage and Hour Division, U.S. Department of Labor, on November 30.

<sup>29</sup> In his brief, the General Counsel does not address the subject of whether or not Wheeler was looking down, or at King. I find that Wheeler was looking down.

<sup>30</sup> Contrary to the testimony of employees King and Severs, I find that King did not earlier tell Randy Wheeler that he had filed the complaint. I further find that, at the time of the remark, Wheeler himself, and as he testified, did not know who filed the complaint. The General Counsel appears to concede this when he argues in his brief that the implied threat involved adverse action against the employee who made the claim when that employee became known to Wheeler.

<sup>31</sup> Surprisingly, a complete search of the complaint as amended reveals no allegation regarding the "spineless individual" remark. However, there was much testimony on the subject and the matter was fully litigated. Since a violation was shown, I am constrained formally to find the same. See *Monroe Feed Store*, 112 NLRB 1336 (1955).

other employees to a committee. On cross-examination by Randy Wheeler, Cunningham was asked whose idea the committee was, to which he responded, "I think it was part of the employees'." Employee Pagles testified that he, Cunningham, Magley, Tharp, and several others decided before the election that they "could handle it for [themselves]" without the Union, and that also before the election they discussed the matter with the Wheelers. Pagles indicated that the committee was formed after the election and at that time was the idea of the employees. Tharp testified that he and Magley initiated a conference with Kevin Wheeler in December regarding the formation of a committee and that it was eventually formed in February or March. Tharp indicated that the separate "late committee" was the employees' idea. Employee McAlister testified the idea for "the committee" formed in February was that of "some employees."

Cunningham testified that, after the committee was formed, he so informed Randy Wheeler, who then suggested that the committee should proceed to draw up a contract. The committee solicited ideas from other employees and in mid-February met with the Wheelers and in effect commenced negotiations about a number of terms and conditions of their employment. Another "late committee" was also formed and the existence and procedures of this committee were put in writing and posted. Other matters were agreed to verbally.

Although the testimony is confusing and somewhat contradictory about the formation of the primary or main bargaining committee (as opposed to the new or renewed "late committee"), I find that the initial testimony of Gayle Cunningham fairly accurately traces the committee's roots and formation. I find that at a minimum Randy Wheeler, in January before the election, planted the seed for the committee, and urged and condoned its formation for the purpose of bargaining. After the election and the committee's formation the Wheelers did in fact recognize, support, negotiate, and bargain with the committee and certain agreements were reached. The General Counsel urges that not only was the preelection suggestion by Wheeler unlawful, but that the later post-election recognition of the committee, the bargaining, and the agreements were also unlawful. I disagree with the latter. After the seed was planted, the Wheelers had nothing to do with the actual formation or administration of the committee other than to bargain with it.<sup>32</sup> I do find that Randy Wheeler's suggestion or "seed" was improper and unlawful interference in violation of Section 8(a)(1) of the Act.

##### 5. Employee Kell's promised raise and other related matters

Kell testified that in late November Kevin Wheeler promised him a 40-cent-an-hour raise and that Wheeler later in effect threatened to withhold the raise unless he voted against the Union, adding that Wheeler later told him that he could not get the raise until "the union deal was settled." Wheeler denied the promised raise, denied

the threatening remarks, indicated Kell would ask for a raise "on the average of at least once a week." The evidence reflects that Kell received a raise of \$1 per hour in July (from \$3 to \$4) and a 35-cent-an-hour raise in mid-October.<sup>33</sup> Kell also received a 40-cent-an-hour raise after the election and on January 23. Regarding the threats and raise, I credit Wheeler over Kell in all respects and thus find no violations of the Act.<sup>34</sup>

On January 23 the Wheelers (together) talked to most of the employees individually. Kell testified that at this time and in response to his (Kell's) inquiry about the raise, Kevin Wheeler denied any such promised raise, adding among other things that he would have to work harder, that he was lucky he did not get fired, and that he was a troublemaker because he started "a union deal." Wheeler generally denied such remarks. I again discredit Kell and find no violations of the Act arising from the January 23 conference.<sup>35</sup>

##### 6. Miscellaneous incidents involving employees Gayle Cunningham, King, and Severs

Employee Gayle Cunningham testified that a week before the election Kevin Wheeler stated to him that "he didn't think we had any problem about winning the election, he thought 75 per cent of the [employees] . . . were going to vote no anyway." Wheeler did not specifically deny the remark. I credit Cunningham and find that the remark was made, and that it was violative of Section 8(a)(1) of the Act. Cunningham did not support the Union and was the Company's observer at the election. Notwithstanding Cunningham's sentiments, favorable to the Company's opposition to the Union, the remark did convey the impression that Wheeler somehow knew the union sympathies of other employees. The choice was still open for Cunningham, as it was for all other employees, and such a remark prior to the election constitutes improper employer interference and influence.

Employee King testified that on January 10 Randy Wheeler informed him that he had heard that he (King) was going to turn him in to OSHA, adding that if he (King) turned him in to one more Government agency he would be his "enemy for life." King also testified that on January 12 Randy Wheeler told him not to challenge the ballots of three certain employees at the election the following day. Wheeler denied the "enemy for life" remark and failed to address the alleged "challenge" remark on January 12. I again discredit King on both counts and find no violations of the Act.

Employee Severs testified that, during his January 23 conference with the Wheelers, Kevin Wheeler stated that he was "an instigator of union activity . . . was discontented with [his] job . . . [and] was continuously late and absent." According to Severs, Wheeler then asked him to quit his job. Wheeler testified that he had received reference calls from other employers regarding Severs, and admitted that he did tell Severs to "intensify

<sup>32</sup> The complaint, properly so in my opinion, does not allege any violations of Sec. 8(a)(2) of the Act which makes it unlawful for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . . .

<sup>33</sup> Kell testified that he did not remember the October raise.

<sup>34</sup> Implicit in this finding is the fact that there was no "scheduled" raise.

<sup>35</sup> Kell and all other employees received raises on January 23, except for the four that were discharged.

his effects to find another job," but denied any mention of the union. According to Wheeler, Severs stated that he would get another job.<sup>36</sup> I credit Wheeler over Severs and thus find no violations of the Act resulting from the January 23 conference.

#### 7. Employee Severs' raise

Severs testified that sometime in October Randy Wheeler promised him a raise of 25 cents per hour on December 15 and an additional 25 cents on March 15, if the quality of his work increased. On December 15 he did not receive a raise but made no inquiry as to why. Severs also testified that at the December employee meeting (the occasion of the "spineless individual" remark) Randy Wheeler announced that there would be no raises until after the "union dealings" because such raises could be considered a "bribe."<sup>37</sup> There is a notation on the payroll sheets, introduced by the General Counsel, reflecting that Severs was to get a 25-cent raise on January 15 (as opposed to December 15) and on March 15.<sup>38</sup> Neither of the Wheelers gave testimony on the subject.<sup>39</sup> The General Counsel urges that, since the payroll entry or notation regarding the raise (in his own exhibit) was "unexplained," Severs' recollection that the first raise was to be on December 15 should prevail, resulting in the unlawful denial of a scheduled benefit.<sup>40</sup> I find that at some point Severs was promised a raise, as reflected in the payroll sheets, and contingent upon work improvement as Severs conceded. However, due to Severs' questionable credibility, I find that the raise was to start on January 15 after the election and thus that there was no discrimination in violation of the Act.<sup>41</sup>

#### 8. The Wheeler "questionnaire" to the employees

The complaint in this case was issued March 30, 1978. It was originally set for hearing November 20, 1978. Sometime after the issuance of the complaint and prior to November 20, 1978, the Wheelers requested that some employees answer a questionnaire regarding the guilt of the Company as alleged in the various paragraphs in the complaint. The questionnaire was on the Company's letterhead, contained sixteen separate questions answerable generally by "yes" or "no" in the left margin.<sup>42</sup> After the employees signed the questionnaire their signatures were notarized. Two of the questions (11 and 12) begin with, "Do you believe . . ." Employee Egolf testified that, although he was not given a choice, there was no

intimidation or pressure, and he was asked to answer to his "best knowledge." Employee Gayle Cunningham testified that the Wheelers said, "it was up to [him] to decide whether or not to complete the questionnaire." Employee Kell testified that he "had to sign it . . . because they told me I had to sign it." Randy Wheeler testified that there was no "pressure" put on the employees and that he asked "if they'd fill it out . . . and if they didn't want to, it was perfectly all right."

An employer does have the privilege of interrogating employees in the investigation of facts concerning issues raised in a complaint where such interrogation is necessary in preparing the employer's defense for trial of the case. However, in doing so the employer must follow certain specific safeguards designed to minimize the coercive impact of such interrogation, as follows: (1) the employees must be told the purpose of the interrogation; (2) they must be assured that no reprisals would take place; (3) submission to the interrogation must be voluntary; (4) it must occur in a context free from employer hostility to union organization; (5) the interrogation must not itself be coercive in nature; and (6) it must not exceed the necessities of legitimate purpose by prying into an employee's subjective state of mind.<sup>43</sup> Although I find that the questionnaire was voluntary and involved no actual "pressure," it failed to meet the balance of the safeguards set out above. I thus find and conclude that it violated Section 8(a)(1) of the Act as alleged in the complaint.

#### 9. Employee King's Christmas bonus and his discharge

King was employed by the Company in May 1976 at \$4.75 per hour. In May 1977 he was made a "straw boss" or section leader in charge of the paint bay and cleaning section, and on July 11 he was raised to \$5.35 per hour. According to King he received a Christmas bonus in 1976 of "\$30 or \$40," as did four other employees. Kevin Wheeler testified that because of poor work King was reassigned back to the job of a welder in October, and later to yet another job apparently not directly on the assembly line. King's reassignment from the paint bay was in effect a demotion, but his pay remained the same. Wheeler related that all but four or five employees received Christmas bonuses in 1977, ranging from between \$5 to \$30, with the section leaders receiving \$75. All employees received a bottle of whiskey. Out of the "four or five" employees not receiving bonuses were the four that were discharged (King, Egolf, Jackson, and Skuttsfield). I find that King's failure to receive a Christmas bonus was not the result of discrimination against him because of his union support or any other protected activity. King's job performance, among other things, simply did not merit the bonuses, as decided by the Wheelers.

The overwhelming creditable evidence in this case supports the fact that King was far from a good (or even adequate) worker or desirable employee, and I so find.<sup>44</sup>

<sup>36</sup> Severs' subsequent departure from the Company is not alleged as a violation in the complaint. Wheeler testified that Severs was not a "troublemaker" but was a poor worker, who apparently wanted another job.

<sup>37</sup> Out of the seven employees called by the General Counsel, only Severs testified to Wheeler's raises and "bribe" remark.

<sup>38</sup> Severs received a 25-cent raise on August 15 and on October 17.

<sup>39</sup> Randy Wheeler was called initially as a witness for the General Counsel and was not questioned about the matter at that time.

<sup>40</sup> The inference apparently drawn by the General Counsel is that the payroll notations regarding the raise were improperly added later by the Wheelers. There is no evidence to this effect, and the Wheelers testified that the payroll records were kept by their bookkeeper or accountant.

<sup>41</sup> I also discredit Severs regarding his testimony that Randy Wheeler spoke about raises at the December employee meeting.

<sup>42</sup> Three of the questionnaires signed by employees Egolf, Jackson, and Gayle Cunningham were admitted into evidence. Although employee Kell gave testimony about his questionnaire, it was not admitted.

<sup>43</sup> *Johnnie's Poultry Co.*, 146 NLRB 770 (1964).

<sup>44</sup> This finding is based in the main on the testimony of employees Jackson, Scott, McAlister, and both Wheelers. As Jackson (himself) indicated in his testimony, the Wheelers had just cause to discharge all four employees.

I further find that King's discharge was not discriminatory and thus not violative of Section 8(a)(3) and (1) of the Act. I am mindful that sometime late in December or early January Randy Wheeler told King, in the presence of employee Gayle Cunningham, that he (King) had "worked harder" in the last month than he ever had. Wheeler in effect conceded such a statement, putting it that he "jokingly" remarked that King's work had improved. Considering the creditable evidence and testimony in the case, and Wheeler's overall demeanor, I credit him to the effect that he used the term "jokingly." Because of the nature and insignificance of the remark, I further credit Wheeler when he subsequently told Cunningham, after Cunningham had reminded him of the remark, that he did not at the time remember making the remark. I am further mindful that, in June, Wheeler offered to reemploy King. I note, however, that both Jackson and Egolf were later rehired, further characteristic of the Company's high turnover. The Wheelers had a disappointing year financially and, because of this, and the "energy crunch," they had decided to close down one of two plant buildings. Discharges were destined to occur and I find that the Wheelers simply picked the worst and most discontented employees at the time, including King.<sup>45</sup>

Upon the foregoing findings of fact and initial conclusions, and upon the entire record, I hereby make the following:

#### CONCLUSIONS OF LAW

1. That the Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

<sup>45</sup> These findings regarding King's discharge have been with full consideration of the Board's teachings in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

2. That the Charging Union is a labor organization within the meaning of Section 2(5) of the Act.

3. That the Respondent Employer violated Section 8(a)(1) in mid-December 1977 by interrogating an employee regarding his union sentiments and support.

4. That the Respondent Employer violated Section 8(a)(1) of the Act in mid-December 1977 by threatening reprisals if employees engaged in protected concerted activities.

5. That the Respondent Employer violated Section 8(a)(1) of the Act on or about January 6, 1978, by giving employees the impression of surveillance of their union and protected concerted activities.

6. That the Respondent Employer violated Section 8(a)(1) of the Act in early or mid-November 1978 by improperly interrogating employees concerning the allegations and issues raised in the complaint in this case, issued by the Board's General Counsel.

7. That the unfair labor practices found in paragraphs 3 through 6, above, affect commerce within the meaning of the Act.

8. That except as found in paragraphs 3 through 6, above, the Respondent Employer has not otherwise violated the Act.

#### THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom,<sup>46</sup> and that it take certain affirmative action including the posting of an appropriate notice.

[Recommended Order omitted from publication.]

<sup>46</sup> I shall recommend that the "cease and desist" provision of the Order be of the narrow variety, which I feel to be appropriate in this case. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).